IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7072 OF 2005

Coca Cola India Private Limited
a Company incorporated under the
Companies Act, 1956 and having
its registered office at Plot
No.1109-1110, Pirangut, Taluka
Mulshi, Pune 412 108 .. Petitioner.

V/s.

1. The Addl.Commissioner of
   Income-tax, having his
   office at Range 1, Pune 'A',
   Wing, 2nd Floor, PMT Bldg.,
   Shankar Sheth Road,
   Swargate, Pune - 411 307

2. The Asstt. Commissioner of
   Income-tax, having his office
   at Range 1, Pune 'A' Wing,
   2nd Floor, PMT Building,
   Shankar Sheth Road, Swargate,
   Pune 411 307

3. The Commissioner of Income-
   tax, having his office
   at Range 1, Pune 'A' Wing,
   2nd Floor, PMT Building,
   Shankar Sheth Road, Swargate,
   Pune 411 307

4. The Union of India, having
   his office at Aayakar Bhavan,
   Marine Lines, Mumbai.

5. Citibank NA having its
   office at Bombay Mutual
   Building, 293, D.N. Road,
   Fort Branch, Bombay 411 001.

6. Bank of Maharashtra having
   its office at Sindh Society
   Branch, Aundh, Pune - 07.

7. ABN Amro Bank NV having its
   branch office at 327, M.G.
   Road, Pune - 411 007

8. ABN Amro Bank NV having its branch office at DLF Centre, Sansad marg, New Delhi.

9. ICICI Bank Limited having its branch office at Shangrila Garden, Bund Garden Road, Pune - 01.

10. Hindustan Coca Cola Bevarages Pvt. Ltd. having its office at 13, Abdul Fazal Road, Bengali Market, New Delhi. .. Respondents.

Mr.Soli Dastur, senior counsel with Mr.R. Murlidharan and Mr.Sanjay Mishra i/b. M/s. Amarchand & Mangaldas & S.A. Shroff & Co. for the petitioner.

Mr.B.M. Chatterjee with Mr.Suresh Kumar for respondent Nos.1 and 3.

Ms.Nita Gaglani for respondent No.9 - ICICI Bank

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 19TH OCTOBER, 2005.

JUDGMENT (Per J.P. Devadhar, J.) :

1. Heard.

2. Rule. Rule returnable forthwith.

3. By consent of the parties, the petition is taken up for final hearing.

4. This petition challenges the orders dated

August 11, 2005 (Exhibit 'H') and September 19, 2005 (Exhibit 'Z') passed by the Assistant Commissioner of Income-tax and the Commissioner of Income-tax, Pune respectively, dismissing the applications filed by the petitioner seeking stay of recovery of demand for the assessment year 2002-2003 and the petitioner has also challenged six notices all dated September 30, 2005 issued under section 226(3) of the Income Tax Act, 1961 ('the Act' for short) whereby various bank accounts of the petitioner have been attached.

5. Assessment order under Section 143(3) of the Act for assessment year 2002-2003 was passed by the assessing officer on March 31, 2005 inter alia making addition of Rs.210 crores by disallowing the marketing expenses and service charges claimed by the petitioner. In the light of the above addition, demand of tax and interest amounting to Rs.77 crore has been raised against the assessee for assessment year 2002-2003. The appeal filed by the petitioner against the said assessment order is pending before the Commissioner of Income Tax (Appeals) since April, 2005.

6. On May 2, 2005, the petitioner made an application before the Assistant Commissioner of Income Tax seeking stay of recovery of demand for the

assessment year 2002-2003 inter alia on the ground that the appeal filed against the assessment order is pending before the Commissioner of Income Tax (Appeals) and that the demand raised against the petitioner for the earlier years wherein similar disallowances were made, have been stayed by the Income Tax Appellate Tribunal / Bombay High Court. However, the said stay application was rejected by the Assistant Commissioner of Income Tax by his order dated August 11, 2005 on the ground that no concrete proposal for payment of taxes have been given by the petitioner.

7. Thereupon, the petitioner filed a fresh stay application before the Commissioner of Income Tax, Pune on September 2, 2005. The said application was also rejected by the Commissioner of Income Tax, Pune by the impugned order dated September 19, 2005 on the ground that the proposal given by the petitioner to pay Rs.1 crore per month is ridiculous and not acceptable. The said order was served upon the petitioner on October 7, 2005. Before service of the said order, the bank accounts of the petitioner were attached by the Income-tax Department by six notices all dated September 30, 2005. Hence, this petition.

8. According to Mr.Dastur, learned senior

counsel for the petitioner, the action of the Revenue in attaching the bank accounts of the petitioner even before serving the order of the Commissioner of Income Tax dated September 19, 2005 is totally illegal and contrary to law. He submitted that the impugned order dated September 19, 2005 was posted on October 4, 2005 and the same was received by the petitioner on October 7, 2005. He submitted that by illegally attaching the bank accounts of the petitioner, the Revenue has already collected nearly Rs.30 lakhs from the said bank accounts. He submitted that the orders passed by the Assistant Commissioner of Income Tax and the Commissioner of Income Tax, Pune in rejecting the stay applications filed by the petitioner are also unsustainable in law as the said orders have been passed totally ignoring the parameters laid down by this Court in the case of KEC International Ltd. V/s. B.R. Balkrishnan reported in 251 ITR 158. Mr.Chatterjee, learned counsel appearing on behalf of the Revenue supported the orders passed by the authorities below. According to Mr.Chatterjee, once the liability is crystalised, the assessee is bound to pay the tax and in the absence of any financial difficulty pointed out by the assessee, the orders passed by the authorities below cannot be faulted.

9. In the present case, the dispute regarding the allowability of the marketing expenses and service charges incurred by the assessee relate back to the assessment year 1999-2000. In all the assessment years commencing from 1999-2000, the assessing officer has disallowed the above expenses and after adding the same to the income, demand has been raised against the assessee and the appeals filed by the assessee against the said assessment orders are pending before the Income Tax Appellate Tribunal. It is an admitted fact that the appeals filed by the assessee for assessment years 1999-2000, 2000-2001 and 2001-2002 are all fixed for hearing before the Income Tax Appellate Tribunal on November 9, 2005. It may be noted that the demand of Rs.27.31 crores for assessment year 1999-2000 has been stayed by the Income Tax Appellate Tribunal subject to the assessee paying Rs.2 crores to the Income-tax Department. Similarly, demand for Rs.55.15 crore in assessment year 2000-2001 has been stayed by the Income Tax Appellate Tribunal subject to the petitioner paying Rs.9 crores in instalments and furnishing adequate security to the satisfaction of the assessing officer. For the assessment year 2001-2002, this Court on a writ filed by the petitioner bearing Writ Petition No.311 of 2005, by its order dated February 16, 2005 had stayed the

demand of Rs.73 crores subject to the petitioners depositing with the Income-tax Department Rs.10 crores in instalments as more particularly stated therein. In this view of the matter, without going into the merits of the case, looking to the stay orders passed in the earlier years and in view of the facts that the appeals for earlier years are fixed for hearing before the Income Tax Appellate Tribunal on November 9, 2005, and in view of the fact that the Revenue has already recovered Rs.30 lakhs by attaching the bank accounts of the petitioner, we are of the opinion that till the disposal of the appeal pending before the Commissioner of Income Tax (Appeals), in the interest of justice the demand should be stayed subject to the following order :

a) On the petitioner paying to the revenue Rs.3 crore on or before November 15, 2005, further sum of Rs.3 crores on or before December 15, 2005 and further sum of Rs.3.70 crore on or before January 31, 2006 towards the demand raised for assessment year 2002-2003, the recovery of the demand for assessment year 2002-2003 shall remain stayed.

b) It is made clear that the above stay

of recovery of demand for assessment year 2002-2003 shall be operative till the disposal and communication of the order that may be passed by the Commissioner of Income Tax (Appeals) and for a further period of four weeks thereafter.

c) If the petitioner fails to pay the amounts specified in clause (a) above on or before the due date, then the stay on recovery shall automatically stand vacated and the Revenue will be at liberty to enforce the demand in accordance with law.

d) Impugned orders dated August 11, 2005 (Exhibit 'H') and September 19, 2005 (Exhibit 'Z') passed by the Assistant Commissioner of Income Tax and the Commissioner of Income Tax, Pune as well as the six notices all dated September 30, 2005 (Exhibit 'Q' and 'V') are quashed and set aside. The Revenue shall forthwith lift the attachment levied on the bank accounts of the petitioner by six notices all dated September 30, 2005.

10. Before parting, we would like to record our

total dissatisfaction regarding the manner in which the authorities below have proceeded to enforce the demand totally ignoring the parameters laid down by this Court in the case of KEC International (supra) while disposing off the stay applications. Moreover, attaching the bank accounts of the petitioner even before communicating the order passed on the stay application is totally high-handed. We hope that the Revenue shall ensure that in future such instances do not occur again. Otherwise, the Court will have no option but to take appropriate action in accordance with law.

11. Petition is disposed of in the above terms with no order as to costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)